

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1187 of 2024

Laxmi Das & Ors.

Versus

United India Insurance Co. Ltd & Anr.

For the appellants/claimants. : Mr. Amit Ranjan Roy

For the respondent nos. 1 : Mr. Parimal Pahari

Heard & Judgment on : 19th February, 2025

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present.
2. The instant appeal had been filed against the judgment and award dated 30th August, 2022 passed by the learned Judge, Motor Accident Claims Tribunal cum 3rd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 42 of 2016.
3. An application under Section 166 of the Motor Vehicles Act, 1988 had been filed on account of accident which occurred on 13th June, 2016 at about 3.00 p.m. with involvement of the offending vehicle being Dumper bearing registration No. WB-29A/7822 which hit the victim standing at Talpukur/Dighasipur Bus stop at an exceeding speed, rashly and negligently on his way to Durgachak S.D. Hospital.
4. The Learned Advocate representing the appellants/claimants submitted that the deceased victim worked as a mason and in view of the notification dated 5th January, 2016 passed by Government

of West Bengal, Labour Commissioner was entitled to a monthly income of Rs. 7296/- categorised as semi skilled labour.

5. The Learned Advocate representing the respondent No.1/insurance company refuted the contention of the learned advocate representing the appellants/claimants and submitted that in absence of oral and documentary evidence the aforesaid sum cannot be considered.
6. Since the occurrence of the accident, insurance policy, the driving licence, route permit etc and other ancillary issues are not disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of considering the monthly income of the deceased victim who was claimed to be a Mason in the claim application. Apart from P.W.1 nobody appear before the learned Tribunal and corroborated the fact that the victim worked as a Mason. However, it is well nigh impossible to adduce any oral and documentary evidence wherein the deceased victim had been a Mason who could have worked on day to day basis. However, considering the fiscal index at the relevant time of accident, this Court considers the monthly income of the victim to be Rs. 7000/-.
7. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.² The impugned award of Rs. 8,20,000/- is modified as follows:

Monthly Income	Rs. 7000/-
Annual Income	Rs. 84,000/-
Future Prospect to be added(25%)	Rs. 21,000/-
	Rs. 1,05,000/-
	Rs. 35,000/-
1/3 rd Deduction	-----

1 2017(4)TAC 673(S.C)

² (2009) 6 SC 121

Personal Expenses	Rs. 70,000/-
Multiplier to be "14"	X 14
	Rs. 9,80,000/-
General Damages	Rs. 77,000/-
Less Award	Rs. 10,57,000/-
Entitlement	Rs. 8,20,000/-
	Rs. 2,37,000/-

8. The Learned Advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs. 8,20,000/-. The appellants/claimants are entitled to a sum of Rs. 2,37,000/- along with 6% interest per annum to be paid from the date of filing of the application till the date of its actual realization.
9. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 2,37,000/- along interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order .
10. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the learned Judge, Motor Accident Claims Tribunal cum 3rd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 42 of 2016 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court's fees.
11. The instant appeal is disposed of accordingly.
12. The pending applications if any stands disposed of.
13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.Ar. Ct.

(Ananya Bandyopadhyay, J.)